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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ASHER JAMES BECKER,

9 Plaintiff,

10 v.

11 WA DEPARTMENT OF
12 CORRECTIONS, et al.,

Defendants.

CASE NO. C18-5739 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS AND REMANDING

13 This matter comes before the Court on Defendant Pat Does' motion to dismiss for
14 lack of subject matter jurisdiction. Dkt. 14.

15 On May 10, 2018, Plaintiff Asher James Becker ("Becker") filed a complaint in
16 Thurston County Superior Court for the State of Washington against the Washington
17 State Department of Corrections, Jerry Shumaker, Spokane Police Department, Mike
18 Gleason, and Pat Does # 1-5. Dkt. 1-1. On September 11, 2018, the United States
19 removed the matter and filed a notice of substitution and certification. Dkts. 1, 2. The
20 United States certifies that Pat Doe # 4 is James Collins ("Collins") and that, at all times
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1 material to the complaint, Collins was a federal employee acting within the scope of his
2 employment. Dkt. 2.

3 On October 5, 2018, the United States moved to dismiss for lack of subject matter
4 jurisdiction because Becker failed to exhaust his administrative remedies. Dkt. 14. On
5 October 18, 2018, Becker responded. Dkt. 18. On October 26, 2018, Defendants Mike
6 Gleason, Jerry Shumaker, and the Washington Department of Corrections (“State
7 Defendants”) responded. Dkt. 19. The State Defendants take no position regarding the
8 merits of the United States’ motion and request that the Court retain supplemental
9 jurisdiction if it dismisses the United States as a party. *Id.* On November 2, 2018, the
10 United States replied. Dkt. 21.

11 In this case, the merits of the United States’ motion are undisputed. Becker
12 concedes that he failed to file “a federal tort-claim to the office in question.” Dkt. 18 at
13 1. Thus, dismissal of his claim against Collins is mandated by binding precedent. *Jerves*
14 *v. United States*, 966 F.2d 517, 518 (9th Cir. 1992) (requirement that tort claimant may
15 not commence proceedings without first filing a claim with the federal agency is
16 jurisdictional and may not be waived); *Cadwalder v. United States*, 45 F.3d 297, 300 (9th
17 Cir. 1995) (“The administrative claim requirements of Section 2675(a) are jurisdictional
18 in nature, and thus must be strictly adhered to.”). The Court grants the United States’s
19 motion on this issue and dismisses Becker’s claims against Collins without prejudice.

20 The remaining issues are (1) whether equitable tolling applies, (2) whether Collins
21 should remain for purposes of Becker’s state tort claims, and (3) whether the Court
22 should retain supplemental jurisdiction. First, the United States correctly argues that the

1 Court should not address equitable tolling until and unless Becker files an administrative
2 claim. Dkt. 21 at 2–3. The Court agrees because, in the absence of an administrative
3 claim, there is no record to review. Therefore, the Court declines to address issues of
4 equitable tolling.

5 Second, Becker requests that the Court only dismiss his federal claims against
6 Collins and retain Collins for all the state tort claims. Dkt. 18 at 3. As the United States
7 correctly points out, it substituted itself for Collins based on all acts Becker has alleged
8 against Collins. Dkt. 21 at 4–6. This substitution works for all claims, state and federal.
9 *Id.* Moreover, it is Becker’s burden to establish that the substitution is invalid in some
10 way, and he has failed to properly contest the substitution. Therefore, the Court will not
11 retain Collins for any of Becker’s claims.

12 Finally, the Court declines to retain jurisdiction over Becker’s state law claims
13 against the remaining non-federal defendants. The State Defendants have failed to
14 establish any federal interest that weighs in favor of the Court retaining jurisdiction.
15 Becker filed this action in the state forum, and he is entitled to prosecute it in that forum.
16 Therefore, the Clerk shall terminate the United States, remove all pending motions from
17 the Court’s calendar, and remand this action to Thurston County Superior Court.

18 **IT IS SO ORDERED.**

19 Dated this 14th day of January, 2019.

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BENJAMIN H. SETTLE
United States District Judge